IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 17.07.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM

and

The Hon'ble Mr. Justice V.DHANAPALAN

Habeas Corpus Petition No.422 of 2006

Muniammal ... Petitioner

Vs.

1.The State of Tamil Nadu
Secretary to Government,
Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Commissioner of Police,
Greater Chennai,
Chennai. .. Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to direct the respondents to produce the detenu Amulraj S/o Ramasamy, aged about 35 years before this Court now confined at Central Prison, Chennai and set him at liberty, call for the records pertaining to the order of detention passed by the second respondent vide his proceeding No.75/2006 dated 31.03.2006 and set aside and same.

For Petitioner : Mr.T.Muruganantham

For Respondents : Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner, who is the mother of the detenu, by name Amulraj, who is detained as a ''Goonda" as contemplated under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned

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detention order dated 31.03.2006, challenges the same in this Petition.

2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel appearing for the petitioner submitted that inasmuch as all the eight adverse cases relating to the offence under Section 379 IPC and the ground case alone relates to the offences under Sections 341, 336, 397, 427 and 506(ii) IPC, in the absence of recurrence of serious offences of earlier, in view of the decision of the Supreme Court reported in 2003 SCC (Criminal) 537 (DARPAN KUMAR SHARMA VS. STATE OF TAMIL NADU AND OTHERS), the detention order is liable to be quashed.

4. In the light of the said contention, we verified all the eight adverse cases. Though it is claimed that the amount viz. pick pocketed is negligible, it is seen from 1999 to 2005, the detenu had eight adverse cases relating to the offence punishable under Section 379 IPC in his credit. In fact, the fifth adverse case in Crime No.1446 of 2002, G3 Kilpauk Police Station, he has committed pick-pocketing of Rs.13,000/- from one Sooriya Narayanan and in the seventh adverse in Crime No.150/2004 B2 Esplanade Police Station, he has committed pick pocketing of Rs.3,700/- and HSBC and IDBI cards from one Raghupathy, who also travelled in the said bus. No doubt, in the above said Supreme Court case, Their Lordships, after pointing out that the solitary instance of robbery, as mentioned in the grounds of detention is not relevant for sustaining the order of detention preventing the petitioner from acting in a manner prejudicial to the maintenance of public order, quashed the detention order therein. Following the said decision, the Division Bench of this Court in 2004 (1) Law Weekly (Criminal) 392 (DHANALAKSHMI VS. THE COMMISSIONER OF POLICE, CHENNAI AND TWO OTHERS), quashed the detention order. Further, in the case on hand , the detenu had involved in eight cases and his modus operandi is that he has to get into the city bus and committed pick-pocketing of purse, cash, valuable credit cards etc. In this regard, the learned Additional Public Prosecutor has brought to our notice the decision of the Division Bench of this Court dated 14.03.2006 in HCP No.1275 of 2005, wherein the Division Bench, after considering the decision of the Supreme Court in Darpan Kumar Sharma's case, after pointing out that if the incident of thefts are too many in a singular locality coupled with the offence of house breaking, then it is bound to disturb the even tempo of public life as in that case the public may not feel safe and after distinguishing the same, upheld the similar detention orders vide HCP Nos.1663/2003 dated 27.01.2004, HCP No.218/2004 dated 28.04.2004, HCP No.388/2005 dated 26.07.2005 and HCP No.1275/2005 dated 14.03.2006. In such circumstances, we are unable to accept the first contention of the learned counsel for the petitioner.

5. The learned counsel for the petitioner further submitted that inasmuch as this Court has granted bail in respect of the detenu on 03.04.2006, the detention order came to be passed on 31.03.2006 and the

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documents were served to him on 04.04.2006. The detaining authority taken note of the same and supplied the bail order dated 03.04.2006. On a perusal of the materials placed, we are unable to accept the said contention since, though this Court granted bail on 03.04.2006, the endorsement of the Registry shows that copy was made ready only on 04.04.2006. By that time, the detenu was served all the documents relating to the detention order dated 31.03.2006. Accordingly, we cannot find fault with the detaining authority in not considering the bail order or forwarding the copy of the same to the detenu.

6. Learned counsel appearing for the petitioner next contended that though the detenu was arrested on 28.01.2006 and the ground case alleged to have taken place on 28.01.2006, the detention order was passed only on 31.03.2006 i.e. after 61 days and in the absence of proper explanation, the detention order cannot be sustained. The learned Additional Public Prosecutor, by drawing our attention to the eighth adverse cases, contended that there is no undue delay in clamping the detention order. On a perusal of eight adverse cases show that the first three cases relate to E2 Royapettah Police Station, fourth and seventh adverse cases relate to B2 Esplanade Police Station, fifth adverse case relates to G3 Kilpauk Police Station, sixth adverse case relates to J5 Shastri Nagar Police Station and eighth adverse case relates to N2 Kasimedu Police Station. In view of the fact that the sponsoring authority has to collect the materials from the different Police Stations, we are of the view that the detention order cannot be interfered with on the ground of delay in passing the detention order.

7. Learned counsel for the petitioner next submitted that the representation submitted to the Advisory Board has not been communicated to the petitioner. On a perusal of the records and the proceedings of the Advisory Board dated 05.05.2006, it is clear that the Board, after perusing the grounds of detention, report of the detaining authority to the Government, the written representation of the detenu's mother Muniammal on behalf of the detenu dated 06.04.2006 received by post and the connected records and also hearing the detenu, opined that there is sufficient cause for detention of Amulraj and also forwarded all the materials to the Government. The representation of the mother dated 06.04.2006, after due consideration, was rejected by the Government on 24.04.2006 and the same was communicated to the detenu on 26.05.2006. Accordingly, we reject the said contention also.

8. Finally, the learned counsel for the petitioner submitted that there is enormous delay in disposal of the representation dated 06.04.2006 of the detenu, which vitiates the ultimate order of detention. With reference to the above claim, learned Additional Public Prosecutor has placed the details, which show that the representation of the detenu was received by the Government on 15.05.2006 and remarks were called for on 16.05.2006 and the remarks were received by the Government on 19.05.2006 and the File was submitted on 22.05.2006 and the same was dealt with by the Under Secretary and by the Deputy Secretary on the same day i.e. on

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22.05.2006 and finally, the Minister for Prohibition and Excise passed orders on 23.05.2006. The rejection letter was prepared on 24.05.2006 and the same was sent to the detenu on 25.05.2006 and served to him on 26.05.2006. Though it is stated that the Government is not justified in submitting the file only on 22.05.2006 when the remarks were received on 19.05.2006, In view of the fact that 20th and 21st were holidays being Saturday and Sunday, we are unable to accept the said contention. We are satisfied that there was no let up or undue delay in considering the representation of the detenu dated 06.04.2006. Accordingly, we reject the said contention also.

9. In the light of what is stated above, we do not find any error or infirmity in the order of detention. Accordingly, the Habeas Corpus Petition fails and the same is dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Secretary to Government, State of Tamil Nadu, Prohibition and Excise Department, Fort St. George, Chennai-600 009.

2.The Commissioner of Police, Greater Chennai, Chennai.

3. The Superintendent, Central Prison, Chennai.
(In duplicate for communication to detenu)

4. The Joint Secretary to Government, Public (Law and Order)
Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

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